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PROGRAMME OF LEGAL AND HUMANITARIAN ASSISTANCE TO VICTIMS OF APARTHEID: THE LEGAL RESOURCES CENTRE

by

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[Note: This issue contains a background paper prepared for the meeting of consultations with human rights and lawyers' organizations from South Africa, organized by the Committee of Trustees of the United Nations Trust Fund for South Africa. The purpose of the meeting, held on 28 February 1991, was to discuss current and future programmes of legal, humanitarian, educational and other assistance to the victims of apartheid in South Africa.

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The views expressed in this paper are those of the author.]

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INTRODUCTION

The Legal Resources Centre (LRC) is a non-profit law centre established in November 1978. It has six offices staffed by 35 salaried lawyers, 12 law graduates in its training programme, 9 paralegals and 41 support staff.

The work of the Centre may be summarized as follows:

(a) It runs test cases, where the result of the case will affect many people. Examples of this have been cases dealing with the pass laws, the right to a State old-age pension, the right of women to vote in the homelands, the rights of migrant workers in the building industry and the rights of farmworkers employed on the "labour tenancy" system;

(b) LRC also takes on cases where the issue affects a whole community. Examples of this are forced removals, the protection of "squatter" communities and land and development issues in a wide range of communities around the country. For example, LRC represents the Soweto People's Delegation in its negotiations with the central and local governments, which have resulted, inter alia, in the writing off of R 550 million in arrears in rent and service charges; the setting of new and affordable tariffs for municipal services; and the establishment of a Metropolitan Chamber (consisting of central and local government bodies and the popular civic associations) to negotiate a democratic and non-racial system of local government in the region;

(c) In many cases the law is relatively clear, but there is consistent abuse of power that needs to be challenged through the courts. Examples are consumer abuse, assaults and unlawful arrests by the security forces and unfair dismissal of workers. It is not enough for legal rights to exist on paper. They need to be asserted by the holders of those rights and to be enforced repeatedly in the courts. This is critical for the creation of a rights culture in South Africa, as well as for the development of respect for the law;

(d) We work closely with approximately 200 community-based advice offices throughout the country. LRC staff provide training and materials to the lay people who run those offices, visit the offices regularly to give advice and assistance and take on cases that they refer to us. Today, many of these offices are in the rural areas, where most people have virtually no access to legal services;

(e) In its fellowship programme, LRC provides a one-year, full-time practical training to young law graduates, most of them black. The aim of the programme is to prepare young lawyers for entry into the profession, and to give them experience of work in human rights and community law. We expect that the programme will shortly receive recognition as part of the formal training that law graduates must undergo before they are qualified to practice.

RESISTANCE AND REPRESSION

For a number of years, the international community has provided generous assistance to those South Africans who have borne the brunt of the struggle

for a democratic South Africa. One of the characteristics of the apartheid State has been the extent to which repression has been mediated through the legal system. Detentions and prosecutions have been widespread. Particularly through the International Defence and Aid Fund for Southern Africa (IDAF) and, in addition, through the South African Council of Churches and the Lawyers Committee for Civil Rights under Law, very many thousands of South Africans have been provided with legal assistance.

Legal protection against repression through the criminal process - funded by the international community - has, in the main, been provided by lawyers in private practice. This has been critical not only in protecting human rights, but also in enabling the victims of apartheid to pursue the struggle for a free South Africa.

That struggle is not yet over. While a good number of apartheid laws have been or are being repealed, the state security apparatus remains largely intact. The struggle for a new South Africa does not take place only in the negotiating room. It continues in community organizations, in trade unions, in women's and youth organizations, in the churches and in countless other arenas. In all of these arenas, repression continues. In many of the "homelands", the scale of repression is unaltered. Recent statistics produced by both IDAF and the Human Rights Commission demonstrate the massive continuing need.

We must all hope that within the shortest possible time, South Africa will have a democratic constitution that will enable all South Africans to express their political preferences through the ballot box. We must hope that this constitution will also permit and protect the myriad other expressions of political views that take place outside the electoral process in a democratic State.

However, we have not yet reached that stage. It is absolutely essential that the international community - having assisted South Africans this far in their struggle - will not abandon them as they approach the final hurdles of this stage of the struggle.

We strongly urge continued support for IDAF and related organizations that provide legal protection against repression and for the new fund that is to be established in South Africa. We must all hope that, in time, the need for this work will decrease dramatically and that this will happen soon. At the moment, the need is as great as ever before.

Institutions such as IRC have, as described above, focused mainly on other, but related, areas of legal work for the promotion of basic human rights and the creation of a culture of human rights and democracy. The importance of this work grows as a new society begins to emerge from the old. The rest of this memorandum explains the changing nature of this work, and why it is of fundamental significance.

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THE PROCESS OF TRANSFORMATION - THE WAY FORWARD

As the process of reconstruction and transformation commences, it is essential that those who have been most dispossessed and marginalized in the past should be assisted to articulate and press their claims.

Over the next few years, lawyers will have a vital role to play in areas such as the following:

(a) As apartheid laws are repealed, it will be essential to ensure that these changes are reflected in changes that take place on the ground. Vested interests will try to ensure that the legal changes are changes in form only, and not in substance. This is already taking place, after the repeal of the Reservation of Separate Amenities Act. Some local councils are attempting to negate this legal change by pricing policies, privatization, or even closing public facilities rather than giving access to all. Litigation is necessary to challenge these practices. When other apartheid laws are repealed, litigation will be necessary to ensure that devices are not used to continue to deny the majority of South Africans fair access to the land and resources of our country;

(b) It is widely expected that, in due course, we will have an entrenched bill of rights in South Africa. This would contain a constitutional guarantee of fundamental freedoms, including freedom from discrimination. This will create a powerful new legal weapon for the representation of South Africans who have been discriminated against in the past. Unless there is effective access to legal services and the courts, a bill of rights will be an empty statement of fine principles;

(c) Of course, the repeal of apartheid laws will not in itself bring an end to poverty and underdevelopment in South Africa. Apartheid has created poverty and homelessness on a vast scale. Positive action will be necessary to address this. There is a need to create new structures, for example for access to affordable land, housing, services and resources. LRC is already experiencing a major demand for services in this new, developmental role. This will undoubtedly continue to grow;

(d) None of this is possible unless the affected communities are aware of their rights and have ready access to legal services. The creation of a rights culture is fundamental to the establishment of a truly democratic South Africa. This is particularly (although not exclusively) critical outside the major cities. LRC intends to expand its work with communities outside the major cities by increasing services to community advice offices, and by using paralegal workers;

(e) Finally - and no less importantly - it is widely accepted that the effective return of exiles and the release of political prisoners is a precondition for the transition to a democratic South Africa. This raises a host of fairly complex legal questions: most obviously, questions of indemnity and immunity on the one hand; and citizenship on the other.

We believe that the role of salaried lawyers - in institutions like LRC - will be critical in these processes. There are many reasons why this is so.

In the first place, it has repeatedly been demonstrated that it is less expensive to use salaried lawyers than to pay private practioners on a case-by-case basis. In addition, the creation of specialized centres enables the lawyers to generate expertise in the relevant area of practice. This means that a more expert service can be provided, and it also cuts costs in that the time spent in preparing for each case can be reduced. Lawyers in legal services offices are also more readily able to develop coherent strategies for dealing with recurrent problems, rather than dealing with issues on a case-by-case basis.

We therefore believe that a strong case exists for concentrating the more pro-active and developmental legal work in non-profit, salaried, legal services offices. It seems to us that as the repression work scales down, more resources will need to be allocated towards this work.

LOOKING FORWARD - LEGAL SERVICES IN A DEMOCRATIC SOUTH AFRICA

One of the strongest criticisms made of existing funding of legal work is that it has not built anything. While a large number of people have received assistance, this has not created lasting legal structures of value. The State legal aid system is hopelessly inadequate, and the large infusion of international funding has done little or nothing to build a decent legal aid system.

This criticism has some force. In many ways, this has been inevitable, given the structure of the South African legal system and the scale of repression.

Now, as the society begins to change, new opportunities begin to emerge. The draft bill of rights prepared by the African National Congress of South Africa (ANC) refers to the need for an effective system of legal aid. The present Government, too, seems to have recognized the need for changes to make the legal system a cornerstone of civil society. A new system is likely to emerge from the old.

Here, too, non-governmental law-based organizations can play a central role. Any effective legal aid system will have to be built on a core of salaried lawyers. It will have to draw, too, on a widespread network of community-based advice offices. Existing organizations, that function on this basis can play a most important role in this development.

We are already seeing the beginning of this process. The State-funded Legal Aid Board has decided to run a pilot public defender project. The aim is to create in time a system of salaried lawyers who will ensure that every accused person facing a possible prison sentence will be provided with a lawyer if he or she cannot afford to pay for this. (At the moment, over 100,000 South Africans are tried, convicted and imprisoned every year without having had any assistance from a lawyer.)

Non-governmental lawyers' organizations, including the Black Lawyers Association, Lawyers for Human Rights, the Legal Resources Centre and the National Association of Democratic Lawyers, are playing a central role in the

steering committee that is to run the pilot project. LRC will shortly argue a critical test case in the highest court, the Appelate Division, on the right to legal representation in criminal cases.

CONCLUSION

Continued access to legal representation is essential if the current changes in South Africa are to result in a truly democratic South Africa, founded on a respect for basic human rights. This is necessary for both of the overlapping phases which are taking place:

(a) Protection of those who are engaged in the struggle for a new society, and who are still facing repression. This should continue to be done through IDAF and other organizations that undertake similar work;

(b) Provision of legal services in the process of transformation, which is necessary as apartheid laws are repealed and the continuing results of literally centuries of legally-based discrimination are addressed. It has been said that the apartheid laws are rather like the scaffolding of a building - they were essential while the building was being constructed, but now that the building has been constructed they can be removed, and the building will not fall down. The apartheid edifice remains: positive action will be needed to demolish it and to build a just society. Legal services will be essential for this process of reconstruction. The most effective way to provide them will be through salaried lawyers in non-profit institutions.

It would be a tragedy if the international community, having contributed so generously towards the struggle of South Africans in the past, were to abandon them at this critical moment.

Courtesy of the UN Centre against Apartheid